Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

BETTY MADRID, *et al.*,

Petitioner,

v.

APRIL KAISER, *et al.*,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Arizona Court of Appeals arbitrarily and capriciously dismissed the appeal for no compelling reason, contrary to the protections afforded by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. Whether the Arizona Supreme Court is constitutionally obligated to resolve the issues on appeal pursuant to A.R.S. § 12-2102(A), which provides that the Supreme Court ***shall*** review all rulings and orders assigned as error. This appears to be an issue of first impression with respect to the Supreme Court's appellate obligations.

PARTIES TO THE PROCEEDING

This case involves a probate matter. The Petitioners, Betty Madrid, Brad Beaman, and Brandon Beaman, initiated formal probate proceedings in the Cochise County Superior Court, State of Arizona. The Petitioners are claimants in the original probate proceedings.

The Respondents are April Kaiser, personal representative of the estate; Lynn Beckwith, Susan Ziegler, William Gamlen, Jill Gamlen, Kerry Newman, claimants in the probate matter; and Lesley Woodman, heir to the estate.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF APPENDICES	iv
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
UNITED STATES CONSTITUTIONAL PROVISION INVOLVED	1
ARIZONA CONSTITUTIONAL PROVISIONS INVOLVED	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR ALLOWANCE OF THE WRIT	11
A. THE ARIZONA COURT OF APPEALS ARBITRARILY AND CAPRICIOUSLY DISMISSED PETITIONERS' APPEAL	13
B. THE SUPREME COURT IS REQUIRED TO RESOLVE THE ISSUES RAISED BY THE PETITIONERS ON THE MERITS	19
CONCLUSION	20
PETITIONER'S APPENDIX	1a-19a

TABLE OF APPENDICES

	Page
Order denying Petition for Review and Request for Court to Resolve Appeal on the Merits (Filed November 9, 2009)	1a
Order dismissing Appeal (Filed July 7, 2009)	2a
Order denying Motion for Reconsideration; Motion for Court to Exercise Special Action Jurisdiction; and Motion for Change of Venue (Filed July 29, 2009)	3a
Order denying Petition for Review (Filed May 29, 2009)	4a
Excerpts from Memorandum Decision (Filed November 7, 2008)	5a
Amended Joint Notice of Appeal (Filed November 17, 2008)	11a
Joint Notice of Appeal (Filed November 21, 2007)	13a
Notice of Supplemental Authorities (Filed November 6, 2009)	15a
Arizona Revised Statutes	17a

TABLE OF AUTHORITIES

	Page
CASES	
Anti-Fascist Committee v. McGrath 341 U.S. 123 (1951)	17
Arizona Podiatry Ass'n. v. Director of Ins. 101 Ariz. 544, 422 P.2d 108 (1966)	19 n. 13
Bouie v. City of Columbia 378 U.S. 347 (1964)	12
Rager v. Superior Coach Sales & Service of Arizona 110 Ariz. 188, 516 P.2d 324 (1973)	11, 18
Rogers v. Alabama 192 U.S. 226 (1904)	18
State v. Birmingham 96 Ariz. 109, 392 P.2d 775 (1964)	16
State v. Johnson 173 Ariz. 274, 842 P.2d 1287 (1992)	15
Will v. United States 389 U.S. 90 (1967)	17
UNITED STATES CONSTITUTIONAL PROVISION	
U.S. Const., amend. XIV	*passim*
ARIZONA CONSTITUTIONAL PROVISIONS	
Article II, Section 3	1, 16
Article II, Section 4	2, 16
Article II, Section 32	2, 16
Article VI, Section 2	2, 18
Article VI, Section 5(3)	2, 19

Article VI, Section 5(6) 2, 19

Article VI, Section 9 2

UNITED STATES STATUTORY PROVISION

28 U.S.C. § 1257(a) 1

ARIZONA STATE STATUTORY PROVISIONS

A.R.S. § 12-102(A) 2, 19

A.R.S. § 12-120 2, 17

A.R.S. § 12-120.21 3

A.R.S. § 12-120.22 3

A.R.S. § 12-120.24 3, 19

A.R.S. § 12-2101 3, 16, 19

A.R.S. § 12-2102 3, 19

A.R.S. § 12-2103 3, 19

ARIZONA SUPREME COURT RULES

Rule 81, Code of Judicial Conduct, Preamble 16

ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

Rule 2(a) 17-18

Rule 23(c)(1) 5 n. 5

MISCELLANEOUS

Opening Statement to Senate Judiciary Committee, Justice Sotomayor 17

OPINIONS BELOW

The denial of the Petition for Review and Request for Court to Resolve Appeal on the Merits by the Arizona Supreme Court (Pet. App. 1a) is unreported. The Order dismissing the Appeal by the Court of Appeals (Pet. App. 2a) is unreported. The Orders denying the Motion for Reconsideration; Motion for Court to Exercise Special Action Jurisdiction; and Motion for Change of Venue by the Court of Appeals (Pet. App. 3a) is unreported.

JURISDICTION

The Arizona Supreme Court issued its decision in this case on November 9, 2009. Petitioners filed a timely Petition for Writ of Certiorari on February 8, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

UNITED STATES CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ARIZONA CONSTITUTIONAL PROVISIONS INVOLVED

Article II, Section 3 of the Arizona Constitution provides: "The Constitution of the United States is the supreme law of the land."

Article II, Section 4 of the Arizona Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law."

Article II, Section 32 of the Arizona Constitution provides: "The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

Article VI, Section 2 of the Arizona Constitution provides in relevant part: "The decisions of the [supreme] court shall be in writing and the grounds stated."

Article VI, Section 5(3) of the Arizona Constitution provides in relevant part: "The supreme court shall have:" "[a]ppellate jurisdiction in all actions and proceedings . . ." with some exceptions not relevant to the present case.

Article VI, Section 5(6) of the Arizona Constitution provides in relevant part: "The supreme court shall have:" "such other jurisdiction as provided by law."

Article VI, Section 9 of the Arizona Constitution provides: "The jurisdiction, powers, duties and composition of any intermediate appellate court shall be as provided by law."

STATUTORY PROVISIONS INVOLVED

This petition involves the following Arizona Revised Statutes ("A.R.S."):

A.R.S. § 12-102(A) provides: "The supreme court shall discharge the duties imposed and exercise the jurisdiction conferred by the constitution and by law."

A.R.S. § 12-120. Creation of court of appeals; court of record; composition; sessions

A.R.S. § 12-120.21. Jurisdiction and Venue

A.R.S. § 12-120.22. Appeal; transfer of case, appeal or petition for a writ

A.R.S. § 12-120.24. Rehearing review by supreme court; issuance of mandate

A.R.S. § 12-2101. Judgments and orders which may be appealed

A.R.S. § 12-2102. Scope of Review by supreme court upon appeal from final judgment

A.R.S. § 12-2103. Powers of supreme court on appeal; affirmance; reversal; modification; restitution; rehearing when three judges do not concur

See Pet. App. 17a-19a for pertinent text of statutes.

STATEMENT OF THE CASE

This case involves a probate matter in which claimants Betty Madrid, Brad Beaman, and Brandon Beaman initiated formal probate proceedings in the Superior Court of Arizona. These formal probate proceedings benefited every other claimant, including one claimant who lied to the Superior Court regarding the delivery and location of a valid unconditional quit claim deed to the real property, which happens to be the main asset of the estate. The Petitioners were also successful in identifying the proper heir to the estate.

The Petitioners have filed two separate appeals with respect to the Superior Court's judgments and orders. The Court of Appeals, on both appeals, has refused to resolve four critical issues on the merits, one issue being "[w]hether the Superior Court erred in granting the claim of Kerry Newman, given the

fact that she executed a valid unconditional quit claim deed to the real property of the decedent and lied to the Court regarding the delivery and location of the quit claim deed." The Arizona Supreme Court, on both occasions, has also refused to review these same four issues, notwithstanding the fact that it is statutorily obligated to review all rulings and orders assigned as error.

1. The first appeal, No. 2 CA-CV 2008-0016, raised ten issues. The Court of Appeals issued a 19-page Memorandum Decision on November 7, 2008. Four of the issues raised in the first appeal were never decided on the merits by the Court of Appeals:

> A. Whether the Superior Court erred in denying Ms. Madrid's Motion to Disqualify Mr. Ramaeker as Attorney of Record and to Strike all Pleadings, Motions, and Papers Filed for the reason that it should be filed in a separate action.[1]
>
> B. Whether the Superior Court erred in finding that April Kaiser should continue to be the Personal Representative if she cannot qualify for a bond.[2]
>
> C. Whether the Superior Court erred in granting the claim of Kerry Newman, given

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[1] The Court of Appeals did not reach the merits of this issue, concluding that the issue was moot. Pet. App. 6a (Memorandum Decision, at 11, ¶ 15).

[2] The Court of Appeals did not reach the merits of this issue, reasoning that Ms. Madrid was no longer an "interested person" when the Court affirmed the denial of Madrid's claim. Consequently, the Court concluded that Ms. Madrid lacked standing to challenge Ms. Kaiser's ability to act as the personal representative. Pet. App. 8a-10a (Memorandum Decision, at 16-17, ¶ 23).

the fact that she executed a valid quit claim deed to the real property of the decedent.[3]

D. Whether the Superior Court erred in denying the Claims of the Beaman children under the family allowance statute.[4]

2. Three of the issues raised in the first appeal were presented to the Arizona Supreme Court for review (No. CV-09-0028-PR). On May 29, 2009, the Arizona Supreme Court, without giving any reasons, denied the Petition for Review. Pet. App. 4a. The four unresolved issues raised in the first appeal were listed as issues not decided by the Court of Appeals.[5] Petition for Review, at 2-3.

3. The Petitioners filed an Amended Joint Notice of Appeal, Pet. App. 11a-12a, from the original Joint Notice of Appeal. Pet. App. 13a-14a. This resulted in the Court of Appeals entertaining a second appeal, No. 2 CA-CV 2008-0179. In their Opening Brief, the Petitioners raised the same four issues that were never decided on the merits by the Court of Appeals in the first appeal:

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[3] The Court of Appeals did not reach the merits of this issue, reasoning that Ms. Madrid was no longer an "interested person" when the Court affirmed the denial of Madrid's claim. Consequently, the Court concluded that Ms. Madrid lacked standing to challenge the validity of Ms. Newman's claim. Pet. App. 8a-10a (Memorandum Decision, at 16-17, ¶ 23).

[4] The Court of Appeals concluded that Ms. Madrid no longer had authority to file an appeal on their behalf. Pet. App. 7a-8a (Memorandum Decision, at 12-13, ¶¶ 16-18).

[5] Arizona Rules of Civil Appellate Procedure 23(c)(1), provides that "[t]he petition shall also list, separately and without argument, those additional issues that were presented to, but not decided by, the Court of Appeals and which may need to be decided if review is granted."

> A. Whether the Superior Court erred in denying the Claims of Brad Beaman and Brandon Beaman under the family allowance and homestead allowance statutes.
>
> B. Whether the Superior Court erred in granting the claim of Kerry Newman, given the fact that she executed a valid unconditional quit claim deed to the real property of the decedent and lied to the Court regarding the delivery and location of the quit claim deed.
>
> C. Whether the Superior Court erred in denying Ms. Madrid's Motion to Disqualify Mr. Ramaeker as Attorney of Record and to Strike all Pleadings, Motions, and Papers Filed for the reason that it should be filed in a separate action, because it has nothing to do with the probate matter.
>
> D. Whether the Superior Court erred in finding that April Kaiser should continue to be the Personal Representative if she cannot qualify for a bond.

Opening Brief, at 4-5.

In their Opening Brief, the Petitioners argued three separate times that:

> **"state courts operate under the constraints of the due process clause of the Fourteenth Amendment. Due process is implicated whenever there is a deprivation of a substantive right of a defendant."** State v. Staatz, 159 Ariz. 411, 416, 768 P.2d 143, 148 (1988) (citing *Bouie v. City of Columbia*, 378 U.S. 347 (1964)).

Opening Brief, at 19, 27, and 40 (emphasis added).

4. Appellee Kerry Newman then filed a Motion to Dismiss the Appellants' Appeal, arguing that:

> with regard to "Issue B"' by and for the reasons that this issue (Newman's claim) was previously raised and decided by the Court (2 CA-CV 2008-0016); that this Court determined that the appellants did not have standing to appeal Newman's claim; that, in the present matter, the Appellants state that they have standing and further "assert that the unresolved issues in appeal number 2 CA-CV 2008-0016 should be adjudicated on the merits by this court;" that there is no existing Arizona case law, Statute, nor procedural rule which allows an Appellant to re-appeal an issue which has already been decided by this Court, ...

Newman's Motion to Dismiss, at 2-3.

Appellee April Kaiser then filed a Motion to Dismiss the Appellants' Appeal with regard to Issues A, C, and D, arguing that:

> Appellants are attempting to bring these claims before the Court of Appeals for a second appearance and counsel is aware of no statutory law or Arizona case law which allows appeal issues which have been addressed by this Court to be re-appealed as Appellants are attempting in to do the present case (Appeal # 2).

Kaiser's Motion to Dismiss, at 2.

The Petitioners responded to Newman's Motion to Dismiss, arguing, among other things, that:

> The Appellants in the present appeal also have a personal substantive right to appeal

> the issues that they specifically raised in the Superior Court pursuant to A.R.S. § 12-2101(J). *See* State v. Birmingham, 96 Ariz. 109, 111, 392 P.2d 775, 776 (1964) (stating that "[a] right to appeal is part of the substantive law of the state.") Most importantly, **"state courts operate under the constraints of the due process clause of the Fourteenth Amendment. Due process is implicated whenever there is a deprivation of a substantive right of a defendant."** State v. Staatz, 159 Ariz. 411, 416, 768 P.2d 143, 148 (1988) (citation omitted).

Response to Kerry Newman's Motion to Dismiss, at 12 (emphasis added).

The Petitioners responded to Kaiser's Motion to Dismiss, arguing, among other things, that:

> The fact is that the Appellants are appealing issues which have never been decided on the merits by this Court. The Appellants had a personal right in the Superior Court under A.R.S. § 14-3105(A) to raise Issues A, C, and D. The Superior Court had jurisdiction to resolve the Appellants' claims under A.R.S. § 14-3105(B) and A.R.S. § 14-1302(B)(3). *See* Gonzalez v. Superior Court, Etc., 117 Ariz. 64, 66, 570 P.2d 1077, 1079 (1977) (concluding that **"by enacting the new probate code the legislature intended to confer upon the Superior Court sitting in probate its full constitutional jurisdiction in matters which might arise affecting estates."**).

Response to April Kaiser's Motion to Dismiss, at 14 (emphasis added).

Appellee Kerry Newman filed a Reply to the Petitioners' Response.

5. On July 7, 2009, the Arizona Court of Appeals, while failing to address the constitutional issues raised by the Petitioners, summarily granted the Appellees' Motions to Dismiss. Pet. App. 2a.

6. The Petitioners filed a timely Motion for Reconsideration arguing that:

> Most importantly, summarily dismissing the present appeal is a deprivation of the Appellants due process rights under the Fourteenth Amendment to the United States Constitution." **Due process is implicated whenever there is a deprivation of a substantive right of a defendant."** State v. Staatz, 159 Ariz. 411, 416, 768 P.2d 143, 148 (1988) (citation omitted).

Motion for Reconsideration, at 6 (emphasis added).

7. The Petitioners also filed a Motion for the Court to Exercise Special Action Jurisdiction, and a Motion for Change of Venue. In their Motion for the Court to Exercise Special Action Jurisdiction, the Petitioners noted that:

> The Arizona "**state courts operate under the constraints of the due process clause of the Fourteenth Amendment. Due process is implicated whenever there is a deprivation of a substantive right of a defendant."** State v. Staatz, 159 Ariz. 411, 416, 768 P.2d 143, 148 (1988) (citation omitted).

Motion for Court to Exercise Special Action Jurisdiction, at 2 (emphasis added).

8. On July 29, 2009, the Court of Appeals summarily denied the Motion for Reconsideration stating only that the "issues raised in their Motion for Reconsideration [had] already been carefully considered by a full panel of this court . . . ." Pet. App. 3a. The Court of Appeals also summarily denied the Petitioners' Motion for Court to Exercise Special Action Jurisdiction and Motion for Change of Venue. *Ibid*.

9. The Petitioners presented two issues to the Arizona Supreme Court in their Petition for Review and Request for Court to Resolve Appeal on the Merits (No. CV-09-0240-PR):

> 1. Whether the Court of Appeals arbitrarily and capriciously dismissed the appeal for no compelling reason in light of the Appellants' statutory, procedural, and **constitutional rights to appeal the issues**, which were thoroughly litigated in the Superior Court and properly presented to the Court of Appeals, or whether the Court of Appeals simply refused to apply controlling Supreme Court precedent. (emphasis added)
>
> 2. Whether the Supreme Court is statutorily obligated to resolve the issues on appeal pursuant to A.R.S. § 12-2102(A), which provides that the Supreme Court ***shall*** review all rulings and orders assigned as error. This appears to be an issue of first impression with respect to the Supreme Court's appellate obligtions.

Petition for Review and Request for Court to Resolve Appeal on the Merits, at 2.

In their Petition for Review, the Petitioners again argued that:

> Most importantly, summarily dismissing the present appeal is a deprivation of the Appellants due process rights under the Fourteenth Amendment to the United States Constitution. **"Due process is implicated whenever there is a deprivation of a substantive right of a defendant."** State v. Staatz, 159 Ariz. 411, 416, 768 P.2d 143, 148 (1988) (citation omitted).

Petition for Review and Request for Court to Resolve Appeal on the Merits, at 12 (emphasis added).

10. On November 6, 2009, the Petitioners filed a Notice of Supplemental Authorities, referring the Court to Rager v. Superior Coach Sales & Service of Arizona, 110 Ariz. 188 (1973) for the legal proposition that an order summarily dismissing an appeal, "since it is determinative of the litigation, was a decision within the contemplation of the statute and required the grounds thereof to be stated." Pet. App. 16a.

11. On November 9, 2009, the Arizona Supreme Court, without giving any reasons, denied the Petition for Review and Request for Court to Resolve Appeal on the Merits. Pet. App. 1a.

REASONS FOR ALLOWANCE OF THE WRIT

For some unexplained reason, five Arizona Court of Appeals Judges and four Arizona Supreme Court Justices have all refused to consider and decide on the merits four substantive issues that have been validly raised by the Petitioners. *See* Pet. App. 1a, 2a, 4a, and 10a. Needless to say, this is extremely

constitutionally frustrating to Petitioners under the Due Process Clause of the Fourteenth Amendment to the United States Constitution as well as the Due Process Clause of the Arizona Constitution. The Petitioners are merely requesting that an Arizona appellate court resolve these four issues on the merits, or at least explain why they refuse to ignore the Petitioners' substantive and constitutional rights. If the appellate decisions are allowed to stand, the fundamental integrity of Arizona probate proceedings, as well as appellate proceedings, is called into serious disrepute.

The Petitioners asserted their due process rights to the Arizona Court of Appeals numerous times in their papers to no avail: Opening Brief, at 19, 27, and 40; Response to Kerry Newman's Motion to Dismiss, at 12; Response to April Kaiser's Motion to Dismiss, at 14; Motion for Reconsideration, at 6; and Motion for Court to Exercise Special Action Jurisdiction, at 2. The Petitioners also asserted their due process rights to the Arizona Supreme Court: Petition for Review and Request for Court to Resolve Appeal on the Merits, at 12.

While the cases cited to the Court of Appeals and Supreme Court involved state criminal statutes, the due process principles announced in *State v. Staatz* and *Bouie v. City of Columbia* apply equally to the process that is due the Petitioners in the present probate matter. *Bouie* noted that when a litigant is denied "a hearing in a pending case, it thereby deprives him of due process of law 'in its primary sense of an opportunity to be heard and to defend [his] substantive right.'" Bouie v. City of Columbia, 378 U.S. 347, 354 (1964) (quoting *Brinkerhoff-Faris Trust and Sav. Co. v. Hill*).

A. THE ARIZONA COURT OF APPEALS ARBITRARILY AND CAPRICIOUSLY DISMISSED PETITIONERS' APPEAL

The Court of Appeals has refused to consider the merits of four issues that had been validly raised in two appeals and has refused to provide compelling reasons for dismissing the present appeal. This is especially troubling, given the following legal assertions raised by the Petitioners in their Responses to the Appellees' Motions to Dismiss:

> 1. A.R.S. § 12-120.21(A)(1) and (B), and A.R.S. § 12-2101(J) provides appellate jurisdiction to the Court of Appeals over the present appeal; [6]
>
> 2. The Appellants have a personal substantive right to appeal the issues that were specifically raised in the Superior Court pursuant to A.R.S. § 12-2101(J). *See* State v. Birmingham, 96 Ariz. 109, 111, 392 P.2d 775, 776 (1964) (stating that "[a] right to appeal is part of the substantive law of the state.");[7]
>
> 3. The Arizona "state courts operate under the constraints of the due process clause of the Fourteenth Amendment. Due process is implicated whenever there is a deprivation of a substantive right of a defendant." State v. Staatz, 159 Ariz. 411, 416, 768 P.2d 143, 148 (1988) (citation omitted);[8]
>
> 4. The Appellants complied with the procedural rules in perfecting their appeal. The Appellants filed a timely Amended Joint Notice of

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[6] Newman Response, at 10; Kaiser Response, at 9.

[7] Newman Response, at 12; Kaiser Response, at 14.

[8] Newman Response, at 12; Kaiser Response, at 16-17.

Appeal from the October 21, 2008 Judgment. Pet. App. 003-004 (ROA 195). *See* In re Property Located at S. Burcham Ave., 204 Ariz. 401, 404, ¶ 9, 64 P.3d 843, 846 (2003) (observing that because appellant "timely filed a notice of appeal from an appealable order, we conclude that we have jurisdiction to hear his appeal");[9]

5. A.R.S. § 12-2102(A) mandates that the Court of Appeals shall review the validity of the judgment appealed from. *See* Dean v. Powell, 111 Ariz. 219, 221, 526 P.2d 1241, 1243 (1974) (holding that "[b]y A.R.S. § 12-2102, upon an appeal from a final judgment, the Court of Appeals ***must review*** 'all orders and ruling assigned as error.'"). *See also* Matter of Estate of Kerr, 137 Ariz. 25, 28, 667 P.2d 1351, 1354 (App. 1983) (applying *Dean* to a probate matter);[10]

6. Under Ariz. R. Civ. App. P. 1 the Appellants have standing as aggrieved parties because the judgment (as amended by the October 21, 2008 Order), denied them a ***personal substantive right*** under A.R.S. § 14-3105(A). *See* Harris v. Cochise County Health Systems, 215 Ariz. 344, 347, ¶ 8, 160 P.3d 223, 226 (App. 2007) (noting that "for appellant to qualify as an aggrieved party, the judgment must operate to deny her some ***personal*** or property right or to impose a substantive burden upon her."); [11] and most importantly,

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[9] Newman Response, at 9-10; Kaiser Response, at 9.

[10] Newman Response, at 14-15; Kaiser Response, at 12.

[11] Newman Response, at 12-14; Kaiser Response, at 10 (noting that Ms. Kaiser did not challenge the Appellants' standing to appeal and, therefore, "if appellee does not assert the

> 7. The Supreme Court has required that "where the court of appeals has general subject matter jurisdiction as well as personal jurisdiction over the parties, the court should strive to resolve an appeal on the merits[.]" Hill v. City of Phoenix, 193 Ariz. 570, 574, ¶ 18, 975 P.2d 700, 704 (1999).[12] *See* State v. Smyers, 207 Ariz. 314, 318 n. 4, 86 P.3d 370, 374 n.4 (2004) (noting that "[t]he courts of this state are bound by the decisions of [the Supreme Court] and do not have the authority to modify or disregard this Court's rulings.").

In light of the Petitioners' legal and constitutional contentions submitted to the Court of Appeals, it is most troubling that the Court has not provided any legal basis for summarily granting the Appellees' Motions to Dismiss. The lack of a reasoned decision could lead one to reasonably believe that the Order dismissing the present Appeal was arbitrary and capricious. "There is no suggestion in this record that the [ ] judge had a valid reason for ignoring the legal precedents previously recounted." State v. Johnson, 173 Ariz. 274, 276, 842 P.2d 1287, 1290 (1992). "A judicial system solidly grounded in rules of law protects citizens from the whims of those in power, including judges." *Ibid.*

The Arizona Supreme Court has recognized that "[o]ur legal system is based on the principle that an

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issue, we may consider the merits of appellant's claim without deciding the issue of standing." Dillard Dep't Stores, Inc. v. Associated Merchandising Corp., 162 Ariz. 294, 296 n.3, 782 P.2d 1187, 1189 n.3 (App. 1989) (citing State Bar v. B Bar Enterprises, Inc., 133 Ariz. 99, 101 n.2, 649 P.2d 978, 980 n.2 (1982)).

[12] Newman Response, at 9; Kaiser Response, at 8-9.

independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law." Arizona Supreme Court Rule 81, Code of Judicial Conduct, Preamble. The lack of a reasoned decision does not elicit much "confidence in our legal system." *Ibid.* The Petitioners' experience so far has not elicited much confidence in Arizona's legal system.

The Petitioners' fundamental contention is that the Arizona Courts, by summarily dismissing their appeal, have not afforded them due process of law under the Fourteenth Amendment to the United States Constitution. The Arizona Constitution acknowledges that "[t]he Constitution of the United States is the supreme law of the land." Arizona Constitution, Article II, Section 3. Moreover, Article II, Section 4 of the Arizona Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law." To ensure compliance with the Constitution, Article II, Section 32 of the Arizona Constitution provides that "[t]he provisions of this Constitution are mandatory, . . ." Thus, in Arizona, Petitioners are guaranteed due process of the law under the Fourteenth Amendment to the United States Constitution.

The Petitioners have a personal substantive right to appeal the issues that were specifically raised in the Superior Court pursuant to A.R.S. § 12-2101(J). *See* State v. Birmingham, 96 Ariz. 109, 111, 392 P.2d 775, 776 (1964) (stating that "[a] right to appeal is part of the substantive law of the state."). The Petitioners complied with all the procedural rules in perfecting their appeal. *See* paragraph 4, *supra*, at 13-14. Summarily dismissing the Petitioners' appeal was

a deprivation of their due process rights under the Fourteenth Amendment to the United States Constitution. "The process of judging is enhanced when the arguments and concerns of the parties are understood and acknowledged." Justice Sotomayor's Opening Statement to the Senate Judiciary Committee, July 13, 2009.

With respect to the contentions raised by the present Petition, this Court has recognized that "[t]he heart of the matter is that democracy implies respect to the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." Anti-Fascist Committee v. McGrath, 341 U.S. 123, 170 (1951). In the footnote to the Court's statement, the Court cited to English courts for the proposition that "[t]hree principles of 'natural justice' were stated to be that 'a man may not be a judge in his own cause,' that 'No party ought to be condemned unheard,' and that 'a party is entitled to know the reason for the decision.'" *Id.*, at 170-71 n. 17. "Even more important in our view, however, than these deficiencies in the record is the failure of the Court of Appeals to attempt to supply any reasoned justification of its action." Will v. United States, 389 U.S. 90, 104 (1967).

The Court of Appeals' Order dismissing the appeal does not comply with statutory requirements. A.R.S. § 12-120(F) provides in part that "a majority of two of the three judges shall be sufficient to render a decision." A decision is defined as "a written disposition of an appeal, including a disposition by opinion, memorandum decision, or order, pursuant to Rule 28." Arizona Rules of Civil Appellate Procedure

2(a). Thus, the Court's granting of the Appellees' Motions dismissing the present appeal should have been signed by at least two judges of the Court of Appeals. *See* Pet. App. 2a. The Order was ineffective because it was signed by only one judge.

The Arizona Supreme Court also failed to give reasons for its decision denying the Petition for Review and Request for Court to Resolve Appeal on the Merits. Pet. App. 1a. Article VI, Section 2 of the Arizona Constitution provides in relevant part that "[t]he decisions of the [supreme] court shall be in writing and the grounds stated." Prior to issuing its decision, the Petitioners filed a Notice of Supplemental Authorities with the Arizona Supreme Court, referring the Court to Rager v. Superior Coach Sales & Service of Arizona, 110 Ariz. 188 (1973) for the legal proposition that an order summarily dismissing an appeal, "since it is determinative of the litigation, was a decision within the contemplation of the statute and required the grounds thereof to be stated." Pet. App. 15a-16a. The Court was constitutionally obligated to explain its decision.

Given that the Petitioners' substantive right to appeal has been unreasonably terminated, they should at least be entitled to know why. Without a valid reason, the only logical conclusion is that the Court of Appeals decision to grant the Appellees' Motions to Dismiss was arbitrary and capricious.

As the Court of last resort, this Court understands that "[i]t is a necessary and well settled rule that the exercise of jurisdiction by this court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights." Rogers v. Alabama, 192 U.S. 226, 230 (1904).

B. THE SUPREME COURT IS REQUIRED TO RESOLVE THE ISSUES RAISED BY THE PETITIONERS ON THE MERITS

The Supreme Court has appellate jurisdiction under Article VI Sections 5(3) and 5(6) of the Arizona Constitution, A.R.S. § 12-120.24, A.R.S. § 12-2101,[13] and A.R.S. § 12-2102(A).

A.R.S. § 12-2102(A) mandates that the Supreme Court, not the Court of Appeals, ***shall*** review all rulings and orders assigned as error. *See* A.R.S. § 12-2103 (defining the appellate powers of the Supreme Court, not the Court of Appeals). *See also* A.R.S. § 12-102(A) which provides that "[t]he supreme court shall discharge the duties imposed and exercise the jurisdiction conferred by the constitution and by law."

Since the Court of Appeals refused to resolve the appeal on the merits, the Petitioners submit that the Arizona Supreme Court was obligated to resolve their appeal on the merits so as to protect their state substantive rights, as well as their state and federal constitutional rights. There appears to be no Arizona decisions interpreting the Supreme Court's obligations under A.R.S. § 12-2102(A) and A.R.S. § 12-2103.

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[13] While A.R.S. § 12-2101(A) provides that "[a]n appeal may be taken to the court of appeals from the superior court in the instances specified in this section", "[i]t has long been a general rule of law that a grant of jurisdiction to one court does not, in the absence of an express provision to that effect, imply that the jurisdiction is to be exclusively vested in that court." Arizona Podiatry Ass'n. v. Director of Ins., 101 Ariz. 544, 548, 422 P.2d 108, 112 (1966).Thus, unless the legislature makes clear that the Court of Appeals jurisdiction is exclusive, the Arizona Supreme Court is not precluded from resolving the issues raised by the Petitioners.

CONCLUSION

For all the above reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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(510) 582-8660 (fax)
kenowenlaw@comcast.net

APPENDIX

Supreme Court

STATE OF ARIZONA
402 ARIZONA STATE COURT BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231
TELEPHONE: (602) 452-3396

RACHELLE M. RESNICK / SUZANNE D. BUNNIN
CLERK OF THE COURT CHIEF DEPUTY CLERK

November 9, 2009

RE: ESTATE OF WILLIAMS/MADRID et al v KAISER et al
Arizona Supreme Court No. CV-09-0240-PR
Court of Appeals Division Two
No. 2 CA-CV 08-0179
Cochise County Superior Court
No. PB-200500256

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on November 9, 2009, in regard to the above-referenced cause:

ORDERED: Petition for Review and Request for Court to Resolve Appeal on the Merits = DENIED.

A panel composed of Vice Chief Justice Hurwitz, Justice Ryan, and Justice Bales participated in the determination of this matter.

Rachelle M. Resnick, Clerk

TO: Susan Ziegler; William Gamlen; Jill Gamlen; Lesley Woodman; Lynn Beckwith; Jeffrey P Handler; Anne M Borowiec. adc

COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

July 07, 2009

RE: IN THE MATTER OF THE ESTATE OF
ROBERT ANTHONY WILLIAMS, JR.
2 CA-CV 2008-0179
Cochise County Superior Court Cause
No. PB200500256

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on July 07, 2009,

ORDERED: Motions to Dismiss are GRANTED and the above-entitled appeal is dismissed.

Presiding Judge Eckerstrom, Judge Brammer and Judge Vasquez participated in the determination of this matter.

J. William Brammer, Jr.
Acting Presiding Judge

COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

July 29, 2009

RE: IN THE MATTER OF THE ESTATE OF
ROBERT ANTHONY WILLIAMS, JR.
2 CA-CV 2008-0179
Cochise County Superior Court Cause
No. PB200500256

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on July 28, 2009,

It appearing that the issues raised by Appellants in their Motion for Reconsideration have already been carefully considered by a full panel of this court as reflected in this court's minute entry granting Appellee's Motion to Dismiss, a motion fully briefed by all the parties,

ORDERED: Motion for Reconsideration is DENIED.

FURTHER ORDERED: Motion for Court to Exercise Special Action Jurisdiction is DENIED.

FURTHER ORDERED: Motion for Change of Venue is DENIED.

Presiding Judge Eckerstrom, Judge Brammer and Judge Vasquez participated in the determination of this matter.

_____

Peter J. Eckerstrom
Presiding Judge

Supreme Court

STATE OF ARIZONA
402 ARIZONA STATE COURT BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231
TELEPHONE: (602) 452-3396

RACHELLE M. RESNICK / SUZANNE D. BUNNIN
CLERK OF THE COURT CHIEF DEPUTY CLERK

May 29, 2009

RE: ESTATE OF WILLIAMS/MADRID et al v KAISER et al
Arizona Supreme Court No. CV-09-0028-PR
Court of Appeals Division Two
No. 2 CA-CV 08-0016
Cochise County Superior Court
No. PB-200500256

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 28, 2009, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice Berch, Justice Hurwitz, and Justice Bales participated in the determination of this matter.

Rachelle M. Resnick, Clerk

TO: Kenneth Owen; Edward W Matchett; Anne M Borowiec, Borowiec & Borowiec; Jeffry P Handler, Clerk, Court of Appeals Division Two, Tucson; Lexis-Nexis; West Publishing. tel

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In the matter of the Estate of	) 2 CA-CV 2008-0016) DEPARTMENT A
ROBERT ANTHONY WILLIAMS, JR.,	)
	) MEMORANDUM) DECISION
Deceased,	) Not for Publication) Rule 28, Rules of
BETTY MADRID, BRAD BEAMAN, AND BRANDON BEAMAN, Claimants,	) Civil Appellate) Procedure
Appellants,	) Corrected by Inter-) lineation Order) dated 1/21/2009
v.	)
APRIL KAISER, Personal Representative; and KERRY NEWMAN, Claimant,	)
Appellees.	)

APPEAL FROM THE SUPERIOR
COURT OF COCHISE COUNTY
Cause No. PB-200500256

Honorable Stephen M. Desens, Judge
Honorable James L. Conlogue, Judge

AFFIRMED IN PART; VACATED IN PART

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* * * * *

PAGE 11 (Memorandum Decision)

* * * * *

Motion to disqualify attorney Ramaeker

¶15 Madrid argues the trial court erred in denying her motion to disqualify Ramaeker as attorney of record for the estate because he was not an active member of the bar. The court denied Madrid's motion on the basis that it was unrelated to the probate and, therefore, was not properly before it. Madrid argues the court erred in denying the motion on that basis and requests that we remand this matter and direct the court to consider this issue on the merits. But, because Ramaeker voluntarily withdrew as counsel for the estate's personal representative the same day the trial court denied Madrid's motion to disqualify him, this issue is moot. We, therefore, do not address this issue further. *See Flores v. Cooper Tire & Rubber Co.*, 218 Ariz. 52, ¶ 24, 178 P.3d 1176, 1181 (App. 2008) ("The mootness doctrine directs that 'opinions not be given concerning issues which are no longer in existence because of changes in the factual circumstances.'"), *quoting Chambers v. United Farm Works Org. Com.*, 25 Ariz. App. 104, 106, 541 P.2d 567, 569 (1975); *Slade v. Schneider*, 212 Ariz. 176, ¶ 15, 129 P.3d 465, 468 (App. 2006) ("Generally, a court will not consider moot questions.").

PAGE 12 (Memorandum Decision)

Beaman children's claims

¶16 Madrid also contends the trial court erred in dismissing the claims she brought on behalf of the Beaman children. We will uphold the court's findings of fact that relate to the Beaman children's claims unless they are clearly erroneous, but we review its legal determinations de novo. *See In re Estate of Newman*, 532 Ariz. Adv. Rep. 12 ¶ 13. And, "[w]e will uphold a probate court's ruling if correct, even if the court reached the right conclusion for the wrong reason." *In re Estate of Wyttenbach*, No. 1 CA-CV 07-0012, ¶ 27, 2008 WL 3906351 (Ariz. Ct. App. Aug. 26, 2008), *citing State v. Koch*, 138 Ariz. 99, 102, 673 P.2 d 297, 300 (1983).

¶17 The Beaman children's claim was filed on their behalf by Madrid. However, a minor may only bring a claim against an estate "by a legally appointed general guardian, or next friend or a guardian ad litem." *Pintek v. Superior Court*, 78 Ariz. 179, 183-84, 277 P.2d 265, 268 (1954). Madrid does not contend, nor does the record establish, that the trial court had appointed either a guardian ad litem to represent the children, *see* A.R.S. § 14-1403(4), or Madrid to serve as the children's next friend. Rather, she contends she brought the claim as the children's legal guardian. A person may become a minor's legal guardian, however, only "by acceptance of a testamentary appointment or upon appointment by the court," neither of which occurred here. A.R.S. § 14-5201; *see* A.R.S. § 14-5207. Madrid, nonetheless, asserted below that she could bring the claim on the children's behalf because she had been appointed by the children's father "to act as [the Beaman children's]

PAGE 13 (Memorandum Decision)

parent and guardian" pursuant to a Military Power of Attorney, which Madrid attached to the children's claims. *See* A.R.S. § 14-5107 (permitting military parent to temporarily delegate "any powers the parent or guardian have regarding care, custody or property of the minor child," except power to consent to minor's marriage or adoption).

¶18 Assuming, without deciding, the power of attorney upon which Madrid relies indeed granted her the authority to file a claim on behalf of the children, it expired on August 5, 2006—before the trial court denied the children's claims and entered a final, appealable judgment, and before she appealed that denial on the children's behalf. "When the power of attorney [delegating parental powers] expires, the legal authority to care for the children terminates. As such, the person . . . no longer has legal power, authority, or obligation with regard to the welfare of the child." *In re Martin*, 602 N.W.2d 630, 632 (Mich. Ct. App. 1999). Thus, even if the power of attorney had granted Madrid the authority to pursue claims against the estate on behalf of the Beaman children, that authority ceased upon the expiration of the power. Thereafter, she had no standing to maintain the action or pursue the appeal on their behalf. *See id.* Accordingly, we do not address this portion of her appeal further.

* * * * *

PAGE 16 (Memorandum Decision)

* * * * *

Madrid's objection to Newman's claim, personal representative, and excusing bond

¶ 23 Madrid contends the trial court erred in granting Kerry Newman's claim against the estate, allowing April Kaiser to serve as the estate's personal representative, and determining Kaiser was not required to post a fiduciary bond. But, only "[p]ersons interested in decedents' estates" may object to claims against an estate or to other administrative matters. *See* § 14-3105(A). An "'[i]nterested person' includes any heir, devisee, child, spouse, creditor, beneficiary and other person who has a property right or claim against a trust estate or the estate of a decedent." § 14-1201(26). Because we affirm the court's denial of Madrid's claim, and because Madrid lacks standing to appeal on behalf of the Beaman children, Madrid is not an ""[i]nterested person." *See Id.* She, therefore, lacks standing to appeal the court's orders granting Newman's claim, excusing the bond requirement, and allowing Kaiser to continue as the estate's personal representative. *See In re Estate of Griswold*, 13 Ariz. App. 218, 221, 475 P.2d 508, 511 (1970) (husband found to have no interest in deceased wife's estate lacked standing to appeal order refusing to revoke letters of administration); *In re Estate of Armstrong*, 155 S.W.3d 448, 452 (Tex. App. 2004) ("'A mere interloper has no . . . right to intervene in the administration of a decedent's estate. . . . [A]llowing uninterested [people] to interfere . . . by merely alleging a factual scenario that,

if true, would qualify them as "interested persons" is repugnant to the public policy of this state.'"), *quoting A & W Indus. v. Day*, 977 S.W.2d 738, 742 (Tex. App. 1998) (third alternation in *Armstrong*); *see also In re Estate of Friedman*, 217 Ariz. 548, ¶ 9, 177 P.3d 290,

293-94 (App. 2008) (party aggrieved by judgment can only appeal adverse part).

* * * * *

PAGE 19 (Memorandum Decision)

* * * * *

Disposition

¶ 28 For the foregoing reasons, we vacate the trial court's order imposing sanctions against Madrid pursuant to Rule 11, Ariz. R. Civ. P., but affirm the remainder of the judgment. We also grant Newman attorney fees as a sanction against Madrid and her attorney, pursuant to Rule 25, Ariz. R. Civ. App. P., as to those portions of Newman's response to Madrid's appellate claims that Williams's death had not been proven and the original trial judge's recusal was ineffective.

s/ ***J. William Brammer, Jr.***
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

s/ ***Joseph W. Howard***
JOSEPH W. HOWARD, Presiding Judge

s/ ***John Pelander***
JOHN PELANDER, Chief Judge

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State Bar No. 020618
Attorney for:
Betty Madrid
Brad Beaman
Brandon Beaman
Kenneth Owen

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2008 NOV 17 PM 1:35
DENISE I. LUNDIN
CLERK OF
SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

In the matter of the Estate of ROBERT ANTHONY WILLIAMS, JR., Decedent,	) No. PB 200500256) AMENDED) JOINT NOTICE
BETTY MADRID, BRAD BEAMAN, BRANDON BEAMAN, Claimants, and KENNETH OWEN, Attorney, Appellants,	) OF APPEAL) ASSIGNED TO) HONORABLE) STEVEN M.) DESENS,
v.	) DIVISION TWO
APRIL KAISER, Personal Representative; LYNN BECKWITH, SUSAN ZIEGLER, WILLIAM GAMLEN, JILL GAMLEN, KERRY NEWMAN, Claimants, and LESLEY WOODMAN, Heir, Appellees.	))))))))

NOTICE IS HEREBY GIVEN that Betty Madrid, Brad Beaman, Brandon Beaman, Claimants, and Kenneth Owen, Attorney, amend the Joint Notice of Appeal filed on November 21, 2007, to add Kenneth Owen as a joint appellant, and to additionally appeal the Order entered in this action on October 21, 2008, specifying the amount and property awarded to Kerry Newman.

DATED this 15th day of November 2008.

s/ ***Kenneth Owen***
KENNETH OWEN, ESQ.
Attorney for Appellants:
Betty Madrid
Brad Beaman
Brandon Beaman
Kenneth Owen

(Certificate of Service is deleted from this document)

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Telephone: (510) 583-0984
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State Bar No. 020618
Attorney for:
Betty Madrid
Brad Beaman
Brandon Beaman

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2007 NOV 21 AM 10:33
DENISE I. LUNDIN
CLERK OF
SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

In the matter of the Estate of ROBERT ANTHONY WILLIAMS, JR., Decedent,	) No. PB 200500256) JOINT NOTICE OF APPEAL
BETTY MADRID, BRAD BEAMAN, BRANDON BEAMAN, Claimants, Appellants, v. APRIL KAISER, Personal Representative; LYNN BECKWITH, SUSAN ZIEGLER, WILLIAM GAMLEN, JILL GAMLEN, KERRY NEWMAN, Claimants, and LESLEY WOODMAN, Heir, Appellees.	) ASSIGNED TO HONORABLE STEVEN M. DESENS, DIVISION TWO

NOTICE IS HEREBY GIVEN that Betty Madrid, Brad Beaman, and Brandon Beaman, Claimants, ap-

peal to the Court of Appeals of the State of Arizona, Division Two, from the Order entered in this action on September 15, 2006, denying in full the claim of Betty Madrid, and the entire Judgment entered in this action on October 31, 2007.

DATED this 17th day of November 2007.

s/ ***Kenneth Owen***
KENNETH OWEN, ESQ.
Attorney for Claimants:
Betty Madrid
Brad Beaman
Brandon Beaman

(Certificate of Service is deleted from this document)

FILED
NOV 06 2009
RACHELLE M. RESNICK
CLERK SUPREME COURT

IN THE SUPREME COURT
STATE OF ARIZONA

In the matter of the Estate of ROBERT ANTHONY WILLIAMS, JR., Decedent,	) CV-09-024-PR) Court of Appeals) No. 2 CA-CV
BETTY MADRID, BRAD BEAMAN, BRANDON BEAMAN, Claimants, and KENNETH OWEN, Attorney, Appellants,	) 2008-0179) Cochise County) No. PB 200500256
v.	
APRIL KAISER, Personal Representative; LYNN BECKWITH, SUSAN ZIEGLER, WILLIAM GAMLEN, JILL GAMLEN, KERRY NEWMAN, Claimants, and LESLEY WOODMAN, Heir, Appellees.	

NOTICE OF SUPPLEMENTAL AUTHORITIES

Pursuant to Ariz. R. Civ. App. P. 17 (Supplemental Citation of Legal Authorities) and Ariz. R. Civ. App. P. 1 (Appellate Rules apply to Supreme Court), Betty Madrid, Brad Beaman, Brandon Beaman, Claimants and Appellants, and Kenneth Owen, At-

torney and Appellant, respectfully ask the Supreme Court to consider the following Supreme Court case: Rager v. Superior Coach Sales & Service of Arizona, 110 Ariz. 188 (1973). This case recently came to the attention of counsel for the Appellants after the Petition for Review was filed. This case is directly on point with respect to Issue 1, page 2 of the Petition for Review. This case supplements Argument A raised in the Petition for Review at pages 8-13. The relevant portion of *Rager* can be found at 110 Ariz. at 190. The legal proposition stated by the Court in *Rager* is that the order summarily dismissing the appeal, "since it is determinative of the litigation, was a decision within the contemplation of the statute and required the grounds thereof to be stated."

Dated: November 4, 2009 Respectfully submitted,

s/ ***Kenneth Owen***
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E-mail: kenowenlaw@comcast.net
State Bar No. 020618
Attorney for Petitioners / Appellants

(Certificate of Service is deleted from this document)

RELEVANT PORTIONS OF ARIZONA REVISED STATUTES ("A.R.S.")

A.R.S. § 12-102 (in relevant part) Jurisdiction and duties; court appointments; contract and volunteer service providers; background investigations; fingerprinting

A. The supreme court shall discharge the duties imposed and exercise the jurisdiction conferred by the constitution and by law.

A.R.S. § 12-120. (in relevant part) Creation of court of appeals; court of record; composition; sessions

A. There is created a court of appeals which shall constitute a single court and such court shall be a court of record.

* * * * *

F. No more than three judges of the court of appeals, including superior court judges and retired judges sitting with the court, shall hear and determine a matter and render a decision, and a majority of two of the three judges shall be sufficient to render a decision.

A.R.S. § 12-120.21 (in relevant part) Jurisdiction and Venue

A. The Court of Appeals shall have:

1. Appellate jurisdiction in all actions and proceedings originating in or permitted by law to be appealed from the superior court, except criminal actions involving crimes for which a sentence of death has actually been imposed.

* * * * *

B. A case or appeal of which the court of appeals has jurisdiction in an action or proceeding originating in or permitted by law to be appealed from the superior

court in a county shall be brought or filed in the division which contains that county. . . . .

A.R.S. § 12-120.22. Appeal; transfer of case, appeal or petition for a writ

A. Appeals to the court of appeals shall be taken from the superior court in the manner prescribed for appeals to the supreme court and within like time.

B. No case, appeal or petition for a writ brought in the supreme court or court of appeals shall be dismisssed for the reason only that it was not brought in the proper court or division, but it shall be transferred to the proper court or division.

A.R.S. § 12-120.24 (in relevant part) Rehearing review by supreme court; issuance of mandate

A party against whom a decision has been rendered or against whom a motion for dismissal of the action has been granted in the court of appeals may file in such court a motion for rehearing after the rendition of the decision or order of dismissal, setting forth with particularity the reasons why he believes the decision or order of dismissal erroneous. The opposite party may file his response to such motion. If the motion is denied, and the party against whom the decision or order has been rendered desires a further review by the supreme court, he shall serve upon the opposite party and file with the clerk of the division a statement that he desires such review. The clerk of the division shall thereupon transmit the record in the case to the clerk of the supreme court. The supreme court shall either grant or deny the request for review. . . . .

A.R.S. § 12-2101 (in relevant part) Judgments and orders which may be appealed

A. An appeal may be taken to the court of appeals from the superior court in the instances specified in this section.

* * * * *

J. From a judgment, decree or order entered in any formal proceedings under Title 14.

A.R.S. § 12-2102 Scope of Review by supreme court upon appeal from final judgment

A. Upon an appeal from a final judgment, the supreme court shall review any intermediate orders involving the merits of the action and necessarily affecting the judgment, and all orders and rulings assigned as error, whether a motion for a new trial was made or not.

A.R.S. § 12-2103 Powers of supreme court on appeal; affirmance; reversal; modification; restitution; rehearing when three judges do not concur

A. The supreme court may affirm, reverse or modify a judgment or order appealed from, and may render such judgment or order as the court below should have rendered, or may remand the action to the court below with directions to render such judgment or order, or may direct that a new trial or other proceedings by had, as justice may require, accompanying the mandate with a copy of its opinion.

B. When the judgment or order is reversed or modified the court may make complete restitution of all property and rights lost by the erroneous judgment or order.

C. If three judges do not concur the action shall be reheard.